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Neutral Citation: 2006 ONFSCDRS 148

FSCO A04-001081

BETWEEN:

**MOHAMMAD UMER**

Applicant

and

**UNIFUND ASSURANCE COMPANY**

Insurer

### **REASONS FOR DECISION**

**Before:** Rosemary Muzzi

**Heard:** May 4, 2006, at the offices of the Financial Services  
Commission of Ontario in Toronto.

**Appearances:** No one appearing for Mr. Umer  
Mauro D'Agostino for Unifund Assurance Company

#### **Issues:**

The Applicant, Mohammad Umer, was injured in a motor vehicle accident on February 9, 2003. He applied for statutory accident benefits from Unifund Assurance Company ("Unifund"), payable under the *Schedule*.<sup>1</sup> Unifund paid some of those benefits only.

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<sup>1</sup> The *Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996*, Ontario Regulation 403/96, as amended.

The parties were unable to resolve their disputes through mediation, and Mr. Umer applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

A pre-hearing arbitrator set the issues down for hearing for May 4, 2006. Mr. D'Agostino appeared for Unifund. Though the hearing was held down until 10:30 a.m., neither Mr. Umer, nor anyone appearing on his behalf, was present.

The issues in this hearing were:

1. Should Mr. Umer's claims for statutory accident benefits be deemed to have been withdrawn?
2. Is Mr. Umer liable to pay Unifund's expenses?
3. Is Unifund entitled to a reimbursement of the assessment fee to be paid by Mr. Umer?

**Result:**

1. Mr. Umer's claims for statutory accident benefits are deemed to have been withdrawn.
2. Mr. Umer shall pay Unifund's expenses as awarded.
3. Unifund is not entitled to a reimbursement of the assessment fee paid.

**EVIDENCE AND ANALYSIS:**

**Deemed Withdrawal**

Mr. Umer's statutory accident benefits claims and his application for arbitration have a history at this office which bears repetition. All of the following facts are gleaned from the documented file history itself.

An initial pre-hearing discussion was set down for December 14, 2004. At that pre-hearing, only Mr. Umer's representative at the time appeared with instructions from Mr. Umer. The parties reached a tentative agreement to settle all claims on a full and final basis. Mr. Umer never executed the settlement documents that were forwarded to him.

As a result, Unifund requested a second pre-hearing discussion. That discussion was held on March 17, 2006, at which time Mr. Umer again failed to appear. Moreover, the pre-hearing arbitrator allowed Mr. Umer's representative to remove himself as representative of record on that day based on the evidence before her that he had been unable to obtain instructions from Mr. Umer and he had lost contact with Mr. Umer who had refused to provide the representative's office with a current phone number and address. The pre-hearing arbitrator set an arbitration hearing for May 4, 2006 with the following proviso: **If Mr. Umer appears at the hearing, Unifund will seek an adjournment as Mr. Umer has not provided any information to Unifund since 2003. In addition, there has not been any exchange of documents.**

A copy of the second pre-hearing letter and the notice of hearing were sent to Mr. Umer at his last known address.

Unifund confirmed that it has not heard from Mr. Umer since sometime in 2003, and requested, in the circumstances, that I deem Mr. Umer's claims to have been withdrawn.

It is clear to me from the file before me that both a copy of the last pre-hearing letter and the notice of hearing were sent to the only known address that the Commission has for Mr. Umer. I am not aware that Mr. Umer has contacted the Commission to provide a more current address or phone number. Furthermore, Mr. Umer did not leave word with the Commission of his intentions with respect to this arbitration hearing.

Historically, arbitrators at the Commission have deemed applications to have been withdrawn where applicants have failed to reasonably pursue their claims despite having been given the opportunity to do so. The evidence before me indicates that, soon after filing his application for arbitration, Mr. Umer failed to directly participate in the dispute resolution process and has failed to reasonably pursue his claims since December 2004.

On this basis, therefore, Mr. Umer's claims for statutory accident benefits are deemed to have been withdrawn because he has failed to pursue his claims.

## Expenses and Assessment Fees

Unifund also sought its costs of the arbitration proceeding and a reimbursement of the insurer's \$3,000 assessment fee.

Unifund asserted that it has incurred significant costs in attending at the hearing date set and also in preparing for and attending two separate pre-hearing discussions when, in fact, Unifund had reasonably concluded that the first pre-hearing discussion had resulted in a full and final settlement. Counsel submitted that Unifund should at least be awarded costs of \$1,000.

Having considered the evidence and the criteria enumerated under the *Expense Regulation*<sup>2</sup>, I exercise my discretion to award Unifund its expenses incurred in these proceedings fixed at \$1,000.

However, with respect to its request for a reimbursement of the assessment fee, I find that Unifund's \$3,000 assessment fee is not a recoverable expense under the Expense Regulation. Section 282(11) of the Insurance Act states that an arbitrator may award all or part of expenses incurred in respect of an arbitration proceeding as may be prescribed in the regulations, to the maximum set out in the regulations. There is no provision in the Expense Regulation for an award of the assessment fee paid by the insurer, notwithstanding Mr. Umer's failure to reasonably pursue his claims.

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Rosemary Muzzi  
Arbitrator

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September 7, 2006  
Date

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<sup>2</sup> Regulation 664, R.R.O. 1990, as amended



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**ARBITRATION ORDER**

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Mr. Umer's claims for statutory accident benefits are deemed to have been withdrawn.
2. Mr. Umer shall pay Unifund's expenses for the arbitration proceeding fixed at \$1,000.

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Rosemary Muzzi  
Arbitrator

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September 7, 2006  
Date